IN THE HIGH COURT OF JUDICAUTRE AT MADRAS

Dated: 27.06.2005

Coram:

The Hon'ble Mr.MARKANDEY KATJU, CHIEF JUSTICE
and
The Hon'ble Mr.Justice F.M.Ibrahim Kalifulla

W.P.No.20186 of 2000

L. Krishnan … Petitioner

vs

1. State of Tamil Nadu represented
   by its Secretary,
   Department of Revenue (Land Development)
   Fort.St.George,
   Chennai - 600 009.

2. The Special Commissioner and
   Commissioner of Land Administration,
   Chepauk, Chennai - 600 005.

3. The District Collector
   Villupuram District,
   Villupuram.

4. The Tahsildar,
   Kallakurichi Taluk,
   Kallakurichi,
   Villupuram District.

5. The Village Administrative Officer,
   Thatchur Post,
   Kallakurichi Taluk,
   Villupuram District - 606 202.

6. Mr.Govida Naicker

7. Mr.Muthusamy

8. Mr.Chinnasamy

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9. Mr.L.Maya Krishnan

10. Mr.Ganesh Gounder

11. Periyammal

12. L. Sekhar … Respondents

Prayer: This writ petition is filed under Article 227 of the Constitution to issue a Writ of Mandamus direct the respondents 1 to 5 to remove the encroachment made by respondents 6 to 12 in the Kodi Poromboke land in Iyan Punjai Survey No.100/1, No.247, Thatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents.

For Appellant ::: Mr.S.Parthasarathy

For Respondents

1 to 5 ::: Mr.V.Raghupathy
Government Pleader

For Respondent 6 ::: Mr.E.Vijay Anand

O R D E R

F.M.IBRAHIM KALIFULLA,J

This is a Public Interest Litigation, where the petitioner seeks for a direction against respondents 1 to 5 to remove the encroachments made by the respondents 6 to 12 in Odai Poromboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents.

2. In fact, on an earlier occasion, the petitioner approached this Court in W.P.No.9562 of 1998 wherein the First Bench of this Court passed an order dated 13.7.1998 disposing of the writ petition, giving liberty to the petitioner to approach the very same respondents 1 to 5 for the removal of encroachment. In the said order, the Collector and the Tahsildar, namely, respondents 3 and 4 were directed to decide the representation by passing a speaking order within one month and also intimate the same to the petitioner.

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3. This time, when the matter was taken up for hearing, learned counsel appearing for the sixth respondent brought to our notice that the fourth respondent, namely, Tahsildar had held an enquiry after the above referred to orders of this Court and that he also submitted his report on 10.12.2004 and a copy of the said report was placed before us. On a perusal of the said report, we find that the enquiry made by the fourth respondent has brought out the fact that not only the respondents 6 to 12 but the petitioner has also encroached into the

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Odai Poromboke. The Tahsildar has ultimately reported that all the encroachments including that of the petitioner are liable to be removed by taking necessary steps under the Tamil Nadu Land Encroachment Act.

4. We also find that the land in question has been classified as 'Odai Poromboke' in the revenue records. Though based on the report of the Tahsildar dated 10.12.2004, this writ petition can be summarily disposed of by directing the third respondent to take necessary steps for the removal of the encroachments. We feel it appropriate to pass this order and give certain other directions to the first respondent-State Government to make an overall study of all such encroachments in respect of the lands which have been classified as lands meant for the purpose of storage of water (i.e. ponds, tanks, lakes, etc). We are of the view that in the present day context, such a step is required to be taken by the State in order to improve the water storage facility prevailing in this State since in many parts of Tamil Nadu people are suffering from an acute shortage of water.

5. Since time immemorial ponds, tanks and lakes have been used by the people of our Country, particularly in rural areas, for collecting rain water for use for various purposes. Such ponds, tanks and lakes have thus been an essential part of the people's natural resources. However in recent years these have been illegally encroached upon in many places by unscrupulous persons who have made their constructions thereon, or diverted them to other use. This has had an adverse effect on the lives of the people.

6. It is also relevant to state that day in and day out, many such petitions are being filed by way of 'public interest litigation' alleging encroachments into ponds/tanks/lake/odai porambokes etc. in different parts of this State, more particularly in villages. Having regard to the acute water scarcity prevailing in the State of Tamil Nadu as a whole, we feel that a time has come where the State has to take some definite measures to restore the already ear marked water storage tanks, ponds and lakes, as disclosed in the revenue records to its original status as part of its rain water harvesting scheme. We also take judicial notice of the action initiated by the State Government by implementing the water harvesting scheme as a time bound programme in order to ensure that the frequent acute water scarcity prevailing in this State is solved as a long time measure. In fact, the classification as Ooranis, Odais, and Lakes in the revenue records are all areas identified in the villages where the rain water gets stored enabling the local villagers to use the same for various purposes throughout the year inasmuch as most parts of the State are solely dependent on seasonal rains both for agricultural operations as well as for other water requirements. Therefore, it is imperative that such natural resources providing for water storage facilities are maintained by the State Government by taking all possible steps both

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by taking preventive measures as well as by removal of unlawful encroachments.

7. In this context, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court reported in *Hinch Lal Tiwari v. Kamala Devi and others, AIR 2001 SC 3215*. Paragraphs 12 and 13 are relevant for our present purpose which read as under: -

> *" 12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.*
>
> *13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13 having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites."*

8. A reading of the above referred passages of the said Judgment shows that the endeavour of the State should be to protect the material resources like forests, tanks, ponds, hillock, mountain, etc., in order to maintain the ecological balance. The Hon'ble Supreme Court has highlighted that such maintenance of ecological balance would pave the away to provide healthy environment which would enable the people to enjoy a quality life which is essence of the right guaranteed under Article 21 of the Constitution. While on the one hand, the State is bound to maintain the natural resources with a view to keep the ecological balance intact and thereby provide a healthy

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environment to the public at large in the State of Tamil Nadu, having regard to the precarious water situation prevailing in the major part of the year, it is imperative that such noted water storage resources, such as tanks, odais, oornis, canals etc. are not obliterated by encroachers.

9. In this connection reference may be made to Article 48A of the Constitution which states: -

> *"Protection and improvement of environment and safeguarding of forests and wild life: - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."*

10. No doubt the above provision is in the Directive Principles of State Policy, but it is now well settled that the fundamental rights and directive principles have to be read together, since it has been mentioned in Article 37 that the principles laid down in the Directive Principles are fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. The Directive Principles embody the aim and object of the State under a Republican Constitution, i.e., that it is a welfare State and not a mere police State, vide *Kesavananda Bharati Vs. State of Kerala, (1973) 4 SCC 225 (vide paragraphs – 134, 139 and 1714)* and embodies the ideal of socio-economic justice, vide *Union of India Vs. Hindustan Development Corporation, AIR 1994 SC 988 (990).*

11. Though the early decisions of the Supreme Court paid comparatively scant attention to the Directive Principles in Part – IV of the Constitution as they were said to be non-justiciable and non-enforceable in the Courts (vide Article 37), the subsequent decisions of the Supreme Court changed this trend and this new trend reached its culmination in the 13 member bench Judgment of the Supreme Court in Kesavananda Bharati's Case (Supra), which laid down that there is no disharmony between the directive principles and fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare State, which is envisaged in the Preamble to the Constitution. The Constitution aims at a synthesis of the two, and the Directive Principles constitute " *the conscience of the Constitution".* Together they form the core of the Constitution, vide *Markandeya, V. Vs. State of A.P., AIR 1989 SC 1308 (paragraph – 9).* They are not exclusionary, but are complementary to each other, vide *Unnikrishnan, J.P. Vs. State of A.P., AIR 1993 SC 2178.* It follows therefore that the courts should uphold, as far as possible, legislation enacted by the State which seeks to remove inequalities and attain *'distributive justice'*, vide, *Lingappa Pochanna Appealwar Vs. State of Maharashtra, AIR 1985 SC 389 (paragraphs 16 and 20), Manchegowda Vs. State of Karnataka,AIR 1984 SC 1151, Fateh Chand Himmatlal Vs. State of Maharashtra, AIR*

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1977 SC 1825, etc., In recent decisions the Supreme Court has been issuing various directions to the Government and administrative authorities to take positive action to remove the grievances which have been caused by non-implementation of the Directive Principles, vide *Comptroller and Auditor General of India Vs. Jagannathan, AIR 1987 SC 537 (paragraphs 20-21), Mukesh Advani Vs. State of M.P., AIR 1985 SC 1363, Bandhua Mukti Morcha Vs. Union of India, AIR 1984 SC 802, Animal and Environment Legal Defence Fund Vs. Union of India, (1997) 3 SCC 549, etc.*

12. Apart from the above we may also refer to Article 51A(g) of the Constitution which makes it a fundamental duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life". This duty can be enforced by the Court, vide *Animal and Environment Legal Defence Fund Vs. Union of India (supra, vide para-15).*

13. In *M.C.Mehta Vs. Union of India, (1997) 3 SCC 715 (vide para - 10)* the Supreme Court observed:-

> *"Articles 21, 47, 48-A and 51-A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wildlife of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The "Precautionary Principle" makes it mandatory for the State Government to anticipate, prevent and attack the cause of environment degradation.We have no hesitation in holding that in order to protect the two lakes from environmental degradation it is necessary to limit the construction activity in the close vicinity of the lakes.*

14. Therefore, we direct the respondents 1 to 5 to take necessary legal steps to remove the alleged encroachments made by the respondents 6 to 12 as well as the petitioner over Odai Poramboke in Iyan Punji Survey No.100/1 at No.247, Tatchur Village, Kallakurichi Taluk, Villupuram District measuring 5 acres and 70 cents. Inasmuch as this writ petition has come before us by way of a public interest litigation, we take this opportunity to direct the State Government to identify all such natural water resources in different parts of the State and wherever illegal encroachments are found, initiate appropriate steps in accordance with the relevant provisions of law for restoring such natural water storage resources which have been classified as such in the revenue records to its original position so that the suffering of the people of the State due to water shortage is ameliorated.

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15. The writ petition is disposed of with the above directions. No costs. Consequently, W.P.M.P is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

pv/
Copy to:

1. State of Tamil Nadu represented
   by its Secretary,
   Department of Revenue (Land Development)
   Fort.St.George,
   Chennai - 600 009.

2. The Special Commissioner and
   Commissioner of Land Administration,
   Chepauk, Chennai - 600 005.

3. The District Collector
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5. The Village Administrative Officer,
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   Kallakurichi Taluk,
   Villupuram District - 606 202.

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